

Notice of Allowability

Application No.

09/954,987

Examiner

Carolyn L Smith

Applicant(s)

BAUER ET AL.

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/13/04.
2. ☒ The allowed claim(s) is/are 13, 18, 19, 20, 21, 121, 122; renumbered respectively 1, 2, 3, 4, 5, 6, and 7.
3. ☒ The drawings filed on 2/19/03 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 1/04, 7/04, 9/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 12092004.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submissions, filed 5/10/04, 7/19/04, and 9/13/04, have been entered.

The information disclosure statement, filed 1/28/04, was considered with the Advisory action, mailed 6/8/04. A duplicate courtesy copy is being provided with this office action.

The following co-pending applications, filed in an IDS on 9/13/04, have been considered: 10/769282, 10/769626, 10/787737, 10/788191, 10/788199, 10/789051, 10/789353, 10/789536, 10/811226, 10/816220, 10/817165, 10/831647, 10/831775, 10/831778, 10/838659, 10/847642, 10/847650, 10/872196, 10/876892, 10/876965, 10/877369, 10/877407, and 10/884372.

Amended claim 13, filed 9/13/04, is acknowledged.

APPLICANTS' ARGUMENTS

Applicants' arguments, filed 9/13/04, have been fully considered and are deemed to be persuasive.

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EXAMINER'S AMENDMENT

Authorization for this Examiner's Amendment was given in a telephone interview with Alan Steele on 12/9/04.

In the claims:

Cancel claims 16, 22, and 40; per above authorization.

Also in the claims:

This application is in condition for allowance except for the presence of claims 2-12, 26, 44, 62, 80, 98, 114, and 120 which were non-elected without traverse. Accordingly, claims 2-12, 26, 44, 62, 80, 98, 114, and 120 have been cancelled.

Cancel claims 2-12, 26, 44, 62, 80, 98, 114, and 120.

REASONS FOR ALLOWANCE

The following is an examiner's statement for reasons of allowance:

The invention is directed to an isolated nucleic acid molecule that encodes a Toll-like receptor 9 polypeptide hTLR9-CXXCm comprising an amino acid sequence of SEQ ID NO: 6 except for the substitution of amino acids 269-274 of SEQ ID NO: 6 with amino acids 269-274 of SEQ ID NO: 3 as well as an expression vector and host cell containing such a nucleic acid molecule. The prior art does not disclose or suggest an isolated nucleic acid molecule that encodes a Toll-like receptor 9 polypeptide hTLR9-CXXCm comprising an amino acid sequence

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of SEQ ID NO: 6 except for the substitution of amino acids 269-274 of SEQ ID NO: 6 with amino acids 269-274 of SEQ ID NO: 3 as well as an expression vector and host cell containing such a nucleic acid molecule, as they are claimed in the instant invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

EXAMINER INFORMATION

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR §1.6(d)). The CM1 Fax Center number is (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Smith, whose telephone number is (571) 272-0721. The examiner can normally be reached Monday through Thursday from 8 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (571) 272-0722.

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Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instruments Examiner Tina Plunkett whose telephone number is (571) 272-0549.

December 9, 2004

Ardin H. Marschel 12/9/04
ARDIN H. MARSCHEL
PRIMARY EXAMINER